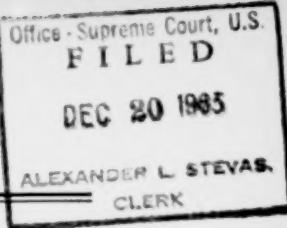


No. 83-857



IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

TOWN OF ORANGETOWN,

Petitioner,

— v. —

ANNE GORSUCH, Individually and as Administrator of the
United States Environmental Protection Agency;
RICHARD DEWLING, Individually and as
Regional Administrator of the United States
Environmental Protection Agency; ROCKLAND COUNTY SEWER
DISTRICT NO. 1; COUNTY OF ROCKLAND; TOWN OF RAMAPO;
TOWN OF CLARKSTOWN; NEW YORK STATE DEPARTMENT OF
CLARKSTOWN; NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION; and ROBERT FLACKE,
as Commissioner of the New York State Department of
Environmental Conservation,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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December 19, 1983

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	(iii)
STATEMENT OF THE CASE	2
Factual Background	2
Prior Proceedings	7
The Opinion Below	14
POINT I: THE COURT SHOULD NOT REVIEW THE DECISION THAT EPA MADE THE REQUIRED FINDINGS	19
A. The Court of Appeals Applied The Appropriate Standard of Review	21
1. Informal Agency Action Is Judged By The "Arbitrary And Capricious" Standard	21
2. Formal Findings Were Not Required	25
3. Discovery And Testimony Of Agency Personnel Is Not Necessary For Judicial Re- view of This Agency Action	30
B. EPA Made The Necessary Determinations	35
POINT II: THE COURT OF APPEALS WAS CORRECT IN NOT REQUIRING WRITTEN FINDINGS	36

	<u>Page</u>
POINT III: THE COURT OF APPEALS APPLIED THE CORRECT STANDARD FOR ASSESS- ING THE LEVEL OF CONTROVERSY	41
CONCLUSION	47
APPENDIX	
Finding of No Significant Impact and Environmental Assessment	A-1

TABLE OF AUTHORITIES

Cases:	<u>Page</u>
<u>Camp v. Pitts</u> , 411 U.S. 138, 93 S.Ct. 1241 (1973)	31, 32, 33, 34, 37, 39
<u>Citizens to Preserve Overton Park, Inc., v. Volpe</u> , 401 U.S. 402 (1971)	22, 23, 25, 26 27, 37 38
<u>F.C.C. v. National Citizens Committee for Broadcasting</u> , 436 U.S. 775 (1978)	24
<u>Fund For Animals v. Frizzell</u> , 530 F.2d 982 (D.C. Cir. 1975)	46
<u>Hanly v. Kleindienst</u> , 471 F.2d 823 (2d Cir. 1972), cert. denied 412 U.S. 908 (1972)	43, 46
<u>Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Companies, et al.</u> , — U.S. —, 103 S.Ct. 2856 (1983)	28, 29, 30, 37 39, 40
<u>Rucker v. Willis</u> , 484 F.2d 158 (4th Cir. 1973)	46

	<u>Page</u>
<u>Scenic Hudson Preservation Conference v. Federal Power Commission, 453 F.2d 463 (2d Cir. 1971), cert. denied 407 U.S. 926 (1972)</u>	24
<u>Town of Orangetown v. Gorsuch et al., Slip Op. (2d Cir. 1983)</u>	17, 22, 28, 34, 36, 37 43, 45 46
 Federal Statutes:	
Administrative Procedure Act	
5 U.S.C. §552 <u>et seq.</u>	21
5 U.S.C. §553	24
5 U.S.C. §554	24
5 U.S.C. §556	24
5 U.S.C. §557	24
5 U.S.C. §706(2) (A)	22
 Clean Water Act	
33 U.S.C. §§1251 <u>et seq.</u>	4
33 U.S.C. §1283	20
33 U.S.C. §1284	20

	<u>Page</u>
National Bank Act	
12 U.S.C. §26	32
National Environmental Policy Act	
42 U.S.C. §§4321 <u>et seq.</u>	5, 7
Federal Regulations:	
40 C.F.R. §§35.925 <u>et seq.</u>	9, 20, 35
40 C.F.R. §35.925-7	9, 35
40 C.F.R. §35.925-8	9, 35
40 C.F.R. 35.925-13	9, 35
40 C.F.R. §1508.27	17, 42

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

NO. 83-

TOWN OF ORANGETOWN,

Petitioner,

- against -

ANNE GORSUCH, Individually
and as Administrator of
the United States Environ-
mental Protection Agency;
RICHARD DEWLING, Individual-
ly and as Regional Admini-
strator of the United States
Environmental Protection
Agency; ROCKLAND COUNTY SEWER
DISTRICT NO. 1; COUNTY OF
ROCKLAND; TOWN OF RAMAPO;
TOWN OF CLARKSTOWN; NEW YORK
STATE DEPARTMENT OF ENVIRON-
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ROBERT FLACKE, as Commission-
er of the New York State De-
partment of Environmental
Conservation,

Respondents.

ON PETITION FOR WRIT OF
CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Factual Background

The Rockland County Sewer District No. 1 ("RCSD") is comprised of a number of municipalities in Rockland County, New York. It operates a sewage treatment plant which is located in a corner of Orangetown, New York. The Town of Orangetown, which is included in Rockland County, refused to be a part of the sewer district when the district was formed, but it does have a vote on the district's governing board of commissioners. Orangetown operates its own

sewage treatment plant, which is located 1,800 feet away from the RCSD plant.

The RCSD plant was built in the 1960's. In the course of time, it has become outmoded and overloaded. When flows of untreated effluent to the plant exceed the plant's treatment capacity, untreated or partially treated sewage is discharged to the Hudson River through the outfall pipe leading from the plant. In the mid-1970's, in order to address the need to increase sewage treatment capacity within the district and to cope with a growing threat to groundwater quality caused by failing septic systems and antiquated sewers, RCSD sought the help of the United States Environmental Protection Agency ("EPA") and the New York State Department of Environmental Conservation ("DEC"), pursuant to a

construction grants program for wastewater treatment plants under the Clean Water Act, 33 U.S.C. §§1251 et seq. RCSD, together with the federal and state agencies, began an extensive facilities planning process.¹ That process involved analysis of present and future needs for sewage treatment in the area, analysis of alternative treatment methods and collection routes and extensive environmental analysis, and extended over a four-year period. In keeping

¹EPA finances the construction of wastewater treatment facilities in three steps. Step 1 grants finance the development of feasibility studies and other preliminary planning, which results in a facilities plan which is submitted to EPA for approval. Step 2 grants finance the preparation of detailed plans and design specifications for construction based on the facilities plan. Step 3 grants finance actual construction.

with the National Environmental Policy Act, 42 U.S.C. §§4321 et seq. ("NEPA"), (which requires environmental review of certain federal actions,) NEPA's implementing regulations, and the Clean Water Act, extensive public participation also took place. At practically every public hearing, Orangetown, the petitioner in this action, appeared and submitted extensive criticism of proposals that were the subject of the facilities planning process. Ultimately, a facilities plan was completed. That plan called for the expansion of the RCSD plant, the upgrading of certain sewers and collection systems which transport effluent to the plant, the installation of extensive odor control mechanisms and the construction of facilities to process sludge -- the by-product of sewage

treatment processing. At the conclusion of the facilities planning process and in accordance with the procedures set forth in the Clean Water Act and its implementing regulations, RCSD applied to EPA for a Step 2 grant for development of plans and design specifications.

Prior to offering the Step 2 grant to RCSD in September, 1980, EPA reviewed the facilities plan, which included analysis of and response to comments received at public hearings, and prepared a written environmental assessment ("EA"). On the basis of the environmental review and assessment, EPA issued a Finding of No Significant Impact ("FONSI"). (The FONSI and EA are reproduced in the appendix attached to this brief.) Upon finding that the project would not have a significant impact

on the environment, EPA was not required to prepare a more detailed environmental impact statement in accordance with the National Environmental Policy Act, 42 U.S.C. §4321 et seq. ("NEPA").

Prior Proceedings

After RCSD accepted the Step 2 grant from EPA, Orangetown, having previously opposed every aspect of the project at every opportunity, began this lawsuit in the United States District Court for the Southern District of New York. It sought to enjoin the release of funds by EPA to RCSD, claiming that EPA did not comply with certain of its own regulations relating to the processing and issuance of construction grants. It also charged that EPA had violated NEPA because it had not prepared an environmental impact statement. The

complaint also alleged that DEC had not met certain requirements of state law. Finally, Orangetown sought monetary damages and injunctive relief on the ground that the operation of the RCSD plant constituted a nuisance. RCSD asserted a counterclaim, charging that the operation of the nearby Orangetown sewage treatment plant constituted a nuisance.

The District Court dismissed the Orangetown state law claims on motion. Trial began in October, 1982.² After eleven days of trial, the Court dismissed both nuisance claims from the bench after summation by counsel. After receiving briefs on the remaining issues,

²At the commencement of trial, Orangetown amended its complaint to include the first phase of construction, Step 3 Phase 1.

the Court then dismissed all of Orangetown's claims, holding that EPA's finding that the project would have no significant environmental impact was proper, and that EPA's procedures in issuing the grant complied with applicable statutory and regulatory law, including the technical determinations challenged by Orangetown in its pleadings.

In its complaint, Orangetown charged that EPA had not made certain determinations relating to environmental review, waste treatment technology, cost-effectiveness and plant capacity, as required by its regulations. 40 C.F.R. §§35.925-7, 35.925-8 and 35.925-13. The EPA regulations also specify that 17 other findings are to be made, although Orangetown never stated in its pleadings or during the course of trial,

that it was challenging findings other than those required by the three subsections enumerated in its complaint.

Several weeks after trial, and before the Court rendered its opinion, Orangetown moved to amend its complaint to include a challenge with respect to the additional 17 findings. The District Court denied the motion in that the defendants -- both RCSD and EPA -- demonstrated there had been no implied consent to try these additional questions, so they had not been contested at trial; thus it was inappropriate for Orangetown to attempt to inject a host of new issues after the close of trial.

Orangetown filed a Notice of Appeal, and the Second Circuit granted RCSD's motion to have the appeal heard on an expedited basis. EPA regulations

require that work be commenced within a specified period after a grant is awarded. Because of bonding difficulties, RCSD faced the risk of losing the grant necessary to upgrade its inadequate sewage treatment facilities simply as the result of the pendency of litigation, even though Orangetown had never established that a single one of its claims was meritorious.

In an extensive opinion, the Court of Appeals affirmed the District Court's decision to dismiss Orangetown's claims in all respects. The Court had before it the entire administrative record, which consisted of the nine-volume facilities plan as well as several additional boxes of correspondence, analysis and other written material, all of which EPA had put in evidence in the proceed-

ings below. While the Second Circuit was considering this case, a clerk of the court apparently contacted the U.S. Attorney's office seeking information about the administrative record relating to the 17 findings which the District Court had ruled were not in issue when it denied Orangetown's motion to amend its pleadings. The U.S. Attorney's office provided the requested information in an extensive letter. The Court of Appeals, however, apparently did not rely on the information submitted. It affirmed the denial of Orangetown's post-trial motion to amend the pleadings to include a challenge to the remaining 17 EPA determinations. The appellate court concurred with the District Court's ruling that the only determinations were

appropriately at issue were those enumerated in the pleadings.

Throughout the proceedings, bond counsel had instructed RCSD that the pendency of the litigation prevented him from providing the prerequisite opinions for the issuance of bonds necessary to begin the project. In an apparent effort to continue litigation endlessly, Orangetown has filed the Petition for a Writ of Certiorari, which is the subject of this brief. Orangetown has also started two new proceedings, one in the state court and another in the United States District Court, in which it seeks to block the issuance of the next phase of the Step 3 grant, which RCSD has accepted. That phase will provide for rebuilding of the processing facilities within the RCSD plant. While Orangetown

pursues every opportunity to litigate against RCSD and the governmental agencies responsible for administering the water pollution control program, and thus delay or prevent the modernization of the RCSD plant, improperly treated sewage continues to flow into the Hudson River and failing septic systems within the sewer district jeopardize groundwater supplies within the region.

The Opinion Below

The Court of Appeals, in a unanimous, 26-page opinion written by Hon. Lawrence W. Pierce, affirmed the District Court's dismissal of the action in every respect. It observed that an environmental impact statement is not required for federal actions not "significant" within the meaning of NEPA. It found that the EPA's determination of

"no significant impact" is neither a rulemaking nor adjudicatory function, but a factual finding made by the agency with particular expertise in environmental matters. Thus, it found that review was limited to a determination whether the agency had been arbitrary or capricious.

The Court then proceeded to analyze every issue that Orangetown asserted that EPA had given inadequate consideration when it issued the FONSI. In examining Orangetown's claims with respect to wetlands, the Court reviewed the analysis of wetlands considerations contained in the administrative record, EPA's comments to RCSD and DEC about wetlands during the facilities planning process, and changes in the project at EPA's insistence that wetlands impact be reduced. On the basis of this extensive

review of the record, the Second Circuit determined that EPA's decision with regard to wetlands effects was neither arbitrary or capricious. Similarly, the Court analyzed the administrative record with respect to its treatment of floodplains impacts, land use impacts, and sewage treatment plant design. The Second Circuit opinion contains several pages of analysis with respect to each of the issues that Orangetown raised; in each instance the Court found that EPA did not abuse its discretion or act arbitrarily in concluding that the project would not significantly affect the environment.

In a separate subsection, the Court analyzed Orangetown's contention that this project required an environmental impact statement on the basis of the

claim it was "highly controversial" under the guidelines issued by the Council on Environmental Quality. See 40 C.F.R. §1508.27. The Court noted that expansion of an unpopular sewage treatment plant can be expected to generate opposition. It observed that under existing precedent, a project is "highly controversial" when "a substantial dispute exists as to the size or effect of the major federal action rather than to the existence of opposition to a use." Town of Orangetown v. Gorsuch et al., Slip Op. at 6638 (2d Cir. 1983), Petition at A-22. The Court found that in light of the evidence supporting the FONSI, more than mere speculation that the plant expansion would increase odor problems would be necessary before the project

could be called "highly controversial."

In sum, the Court found that EPA's finding of no significant impact and its conclusions with respect to all of the elements of that finding were supported by substantial evidence, were not arbitrary and capricious, and did not represent an abuse of discretion. It therefore determined that it was not within the competence of the Court to overrule the agency's determination.

In considering Orangetown's claims relating to alleged violations of EPA's procedural regulations for grant-making, the Court undertook its own review of the administrative record. It upheld the District Court's ruling that the record revealed that in making certain technical determinations, EPA complied

with the terms of the applicable regulations and that the objectives of those regulations were accomplished.

The Court also reviewed the evidence presented at trial with respect to the nuisance claims. It found no basis for overturning the District Court's ruling that Orangetown's evidence failed to prove that the County plant operation resulted in a public nuisance. Finally, the Court upheld the District Court's determination in dismissing Orangetown's claim that DEC did not comply with New York State's environmental quality review act.

POINT I

THE COURT SHOULD NOT
REVIEW THE DECISION THAT
EPA MADE THE REQUIRED
FINDINGS

The first question that petitioner

raises for review by this Court is whether or not EPA failed to make certain determinations required under the Clean Water Act, 33 U.S.C. §§1283 and 1284, and its implementing regulations, 40 C.F.R. §35.925 et seq. and if so, whether such failure rendered the grant at issue unlawful. The District Court and the Court of Appeals both conducted reviews of the extensive record of administrative action in this case, after which they both found that the agencies had complied with that set of regulations, and that the grants were lawful. Petitioner claims that in spite of the careful factual review given these issues by the lower courts, they merit review by the Supreme Court because of the importance of the issue of the enforceability of the statutory and regulatory requirements. Petitioner suggests that

it is an open question whether or not the standard to be applied to such an action, which is neither rulemaking nor adjudication, should be as rigorous as that applied by the Administrative Procedure Act ("APA"), 5 USC §§552 et seq., to actions which are either rulemaking or adjudicatory. There is, however, no need for the Supreme Court to address this question anew. It is well settled by the Supreme Court in prior opinions, and the decision of the Court of Appeals fits well within the guidelines thus set forth. This case presents no issues which would call into question the established law.

A. The Court of Appeals Applied The Appropriate Standard of Review

1. Informal Agency Action Is Judged By The "Arbitrary And Capricious" Standard

In assessing the administrative ac-

tion here, the Court of Appeals applied the standard of review set forth in the Administrative Procedure Act ("APA"), which provides that agency action may be overruled by a court only if the action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706 (2)(A) (1976); Town of Orangetown v. Gorsuch et al., Slip Op. at 6628-29, Petition at A-13.

There is no reason, based on the facts of this case, for this Court to reconsider the standard of review as applied. Administering and issuing grants under the construction grants program of the Clean Water Act is neither a rule-making nor an adjudicatory function. In Citizens to Preserve Overton Park, Inc.

v. Volpe, 401 U.S. 402 (1971) ("Overton Park"), at issue was the approval by the Secretary of Transportation of the construction of an interstate highway through a public park in Memphis. Such a construction project, and the necessary approvals for it, involved neither rulemaking nor an adjudication. The Supreme Court had no difficulty in determining that the action was therefore governed by the arbitrary and capricious standard of the APA, rather than the more rigorous requirements applied to formal, on-the-record actions like formal rulemaking and adjudication. 401 U.S. at 414-15. In the APA, Congress chose to set higher standards for agencies with regard to record-keeping, public statements and due process when they

were acting in a quasi-judicial or quasi-legislative function. 5 U.S.C. §§553, 554, 556, 557. See F.C.C. v. National Citizens Committee for Broadcasting, 436 U.S. 775, 802-803 (1978); Scenic Hudson Preservation Conference v. Federal Power Commission, 453 F.2d 463, 468 (2d Cir. 1971), cert. den. 407 U.S. 926 (1972). Technical findings made by agencies in the course of sewage treatment construction grants, as in highway construction projects, are internal and preliminary in nature, and result from the exercise of an expert function, which is neither legislative nor judicial. The agencies in such actions are making decisions based on administrative and technical expertise and are neither assessing penalties or punishments

against individuals before them, nor setting forth prospective regulations to be followed in the future. This case presents no reasonable opportunity to depart from the well-established understanding of the Congressional mandate that a higher standard of review should be applied to rulemaking and adjudication than to grant issuance.

2. Formal Findings Were
Not Required

The Court of Appeals was correct in not requiring formal findings when it analyzed the agency's record of its action in this case. In Overton Park, the relevant statutes prohibited the Secretary of Transportation from authorizing the use of federal funds to finance

construction of a highway routed through a public park if a feasible alternative existed, and further required the Secretary to minimize any harm to the park if there was no alternative route available. The Secretary's approvals of the route and design of the highway were unaccompanied by a statement of the Secretary's factual findings on those points. In reviewing the agency action in that case, the District Court had relied solely on affidavits prepared for litigation by both agency representatives and representatives of the challengers to the action.

The Supreme Court found that although the Secretary did not make formal findings as to alternatives and the minimization of harm, the statutes did not require formal findings, and therefore

that failure alone did not mandate remand to the agency. 401 U.S. at 417. In that case, because the entire administrative record was not before the Court, it was unable to determine whether or not informal findings or other evidence of the determinations were included in the record. The Court therefore remanded the case to the District Court, with instructions that the lower court review the entire administrative record to determine the appropriateness of the Secretary's decision.

The reasoning in Overton Park is therefore perfectly consistent with the reasoning of the Court of Appeals in the case at bar. The difference between the two cases is that, here, the entire administrative record was before the District Court and the Court of Appeals.

Both courts had the opportunity to review the entire record, and both courts found evidence to support a finding that the EPA had complied with the statute and regulations. The Court of Appeals stated, "all that is necessary is that a reviewing court be able to trace from the written record the path followed by the agency in deciding to take a particular action ..." when the statute does not require formal findings. Town of Orangetown v. Gorsuch et al., Slip Op. at 6641, (2d Cir. 1983); Petition at A25.

This standard is consistent not only with Overton Park, but with the most recent Supreme Court decision reviewing informal agency action, Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Companies, et al., ___ U.S. ___, 103 S.Ct. 2856

(1983) ("Motor Vehicles"). In that case, this Court overturned the action by the Department of Transportation rescinding a rule requiring that new motor vehicles be equipped with passive restraints to protect the safety of vehicle occupants in the event of a collision. The Supreme Court found that the agency action was arbitrary and capricious because the administrative record demonstrated that the agency had not given sufficient consideration to a relevant alternative, and because the record did not provide the basis for concluding that the rescission was the result of reasoned decisionmaking. The Court therefore examined the administrative record compiled by the agency in the course of taking its action, and found that record insufficient to jus-

tify the action. That approach is precisely the same approach that the Court of Appeals took in analyzing agency action in the case at bar. In this case, however, unlike Motor Vehicles, the Court found that the administrative record did substantiate agency action.

3. Discovery And Testimony Of
Agency Personnel Is Not
Necessary For Judicial
Review Of This Agency Action

The limitations placed by the district court on petitioner's delving into the mental processes of agency personnel, either during discovery or trial, do not strengthen petitioner's argument that a stricter standard of judicial review should have been applied in this case. Petitioner seems to argue that because it asserted during trial that it failed to understand the administrative

record, it therefore was entitled to obtain individual testimony from agency personnel to explain that record. However, the cases cited by petitioner do not support it in that argument. In Camp v. Pitts, 411 U.S. 138 (1973), an applicant brought suit to compel the Comptroller of the Treasury to issue a bank charter to it. The Comptroller had twice denied the application. The Court there found that the statute did not require the Comptroller to make formal findings on the record when passing on applications for new banking authorities. The court cited language from the National Bank Act, which in fact used similar language to that of the Clean Water Act in referring to the agency decisionmaking. The National Bank Act

stated that the Comptroller was to "ascertain" certain specific facts with regard to the qualifications of the applicant, in considering the application. 12 U.S.C. §26. Similarly, the Clean Water Act and regulations state that the Administrator shall "determine" certain facts exist. Without more, neither statute mandates formal findings.

In Camp, the Court went on to find that the Court of Appeals had been in error in ordering a de novo hearing. It stated that the only deficiency suggested in the agency action was that the agency inadequately explained its decision. The Court stated that "such a deficiency was not enough to warrant a de novo hearing. A trial court should apply the arbitrary and capricious standard set forth in the APA and "in apply-

ing that standard, the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." Camp v. Pitts, 411 U.S. at 141.

The Court further held that if there had been a complete absence of explanation for the administrative action in the record, then perhaps the court could obtain from the agency "either through affidavits or testimony, such additional explanation of the reasons for the agency decision as made prove necessary." Id. at 143. However, the Comptroller's record provided some explanation of its action. "The explanation may have been curt, but it surely indicated the determinative reason for the final action taken ... The validity

of the controller's final action must, therefore, stand or fall on the propriety of that finding, judged, of course, by the appropriate standard of review." Id. The agency action in the case at bar presents the same situation. While "a clear and concise document outlining seriatim" the required findings might have been desirable for ease of review by the Court, the existing form of the record does not provide petitioner with the opportunity to examine witnesses from the agency. Town of Orangetown v. Gorsuch et al., Slip Op. at 6640 (2d Cir. 1983); Petition at A-24. The agency action must stand or fall on the administrative record. Both lower courts determined that the action should stand.

B. EPA Made The Necessary Determinations

The determinations at issue in this case are those included in 40 C.F.R. §35.925-7, §35.925-8, and §35.925-13, which refer to the waste treatment technology, capacity and cost-effectiveness of the planned plant and collection systems, and the environmental review performed by the agency.³ The Court of Appeals found that the administrative

³As discussed above, the Court of Appeals upheld the District Court's determination that since the remaining determinations in 40 C.F.R. §35.925 et seq. were not placed in issue in the pleadings or during trial, they were not subject to review in this action. Petitioner's continued post-trial insistence that the other determinations should receive judicial review cannot change the fact that petitioner failed to make known its challenge to those determinations prior to or during trial. Further review of the District Court's ruling on that motion is unwarranted.

record provided sufficient documentation of the agency's decision on these issues, and that therefore the agency complied with applicable law in issuing the grants. Town of Orangetown v. Gorsuch et al., Slip Op. at 6641 (2d Cir. 1983), Petition at A-25. The Environmental Assessment prepared by EPA, which was promulgated along with the Finding of No Significant Impact, evidences agency determinations on all the issues raised by the relevant regulations. In addition, the administrative record includes documents submitted by the grantees which provide extensively detailed studies of those issues.

POINT II

THE COURT OF APPEALS WAS CORRECT IN NOT REQUIRING WRITTEN FINDINGS

The second reason that petitioner

sets forth for granting the petition is related to its first point, and must be rejected on the same basis. The Court of Appeals found that the EPA regulations "do not require that the agency's actions be set down in any particular order or form, or even that its determinations be made in writing." Town of Orangetown v. Gorsuch et al., Slip Op. at 6640, (2d Cir. 1983), Petition at A-24. Petitioner apparently contends that this Court did not mean what it said in cases like Overton Park, Camp v. Pitts, and Motor Vehicle, when it required that the Court review the administrative record as a whole when a statute does not require formal findings. Petitioner constructs a dichotomy in the petition, reasoning that if written findings are not required then the findings must be either oral or implied. It then states

that oral findings would require oral testimony, and that implied findings are no findings at all. This reasoning, according to petitioner, leads neatly back to the conclusion that discovery of and testimony by agency personnel should have been permitted.

The fatal flaw in this reasoning is that the Supreme Court and lower courts have consistently permitted examination of the administrative record for evidence of informal or implied findings. In Overton Park, the Supreme Court instructed the District Court to peruse the administrative record for such findings on remand. It did not direct the lower court to take oral testimony, but allowed the district court some flexibility in determining the necessity for such testimony after its examination of

the record. 401 U.S. at 419-20. The same result prevailed in Camp v. Pitts. 411 U.S. at 143. In both cases, the Court found that the statute did not require formal findings, and in neither case did the Court order that oral testimony must be taken. If the Court did not believe that implied findings were acceptable, then it would have ordered the District Court to take oral testimony, or would have remanded to the agency for express, formal findings. Finally, in Motor Vehicle, the Court did not strike down the agency's rescission on the basis of a procedural deficiency in the form of failure to state formal findings. It found that upon review, the agency's record proved to be sub-

stantively insufficient to justify the action.⁴

As in the cases discussed above, the Court of Appeals here found that formal findings were not required; it examined the administrative record for evidence of the basis for the administrative action. On that basis, it upheld the agency action. Contrary to petitioner's characterization, the Court did not relieve EPA from its obligation to comply with the regulations, but

⁴It is important to note that in Motor Vehicle, the Supreme Court considered it "relevant that Congress required a record of the rulemaking proceedings to be compiled and submitted to a reviewing court, 15 U.S.C. §1394 [motor vehicle safety standards promulgation], and that agency findings under the Motor Vehicle Safety Act would be supported by 'substantial evidence on the record considered as a whole.'" (Citations omitted). 103 S.Ct. at 2856.

rather found that the agency had complied with the regulations. There is nothing illogical or inconsistent about this approach, and thus there is no need for this Court to review the lower courts' decisions.

POINT III

THE COURT OF APPEALS APPLIED
THE CORRECT STANDARD FOR
ASSESSING THE LEVEL OF CONTROVERSY

Petitioner asserts a final, unfounded claim that this Court should review the ruling by the Court of Appeals that the amount of controversy surrounding this project did not mandate an Environmental Impact Statement ("EIS") pursuant to NEPA. The decision in the Second Circuit is entirely consistent with the prevailing decisions in

prior cases, and leaves no questions open for settlement by this Court.

The guidelines of the Council on Environmental Quality ("CEQ") state that consideration of environmental impacts for purposes of deciding whether to require an EIS, should include an evaluation of "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 C.F.R. §1508.27. As discussed above, after reviewing the administrative record of this action, both the District Court and the Court of Appeals found that EPA had not been arbitrary or capricious in issuing the Finding of No Significant Impact, with respect to every issue raised by petitioner, including that of public controversy. The Court of Appeals found

that "the record lacks a sufficient basis to indicate that the opposition to this project was of such an extraordinary nature as to require an EIS." Town of Orangetown v. Gorsuch et al., Slip Op. at 6638 (2d Cir. 1983), Petition at A22.

Petitioner exaggerates the choice of of the word "extraordinary" by the Court of Appeals, contending that with that one word, the Court intended to set a new standard for the level of controversy requiring an EIS. To the contrary, however, the decision by the Court of Appeals on this issue is completely in line with the cases cited by petitioner. In Hanly v. Kleindienst, 471 F.2d 823, 830 (2d Cir. 1972), cert. denied 412 U.S. 908 (1972), the Court stated that "... the term 'controver-

sial' apparently refers to cases where a substantial dispute exists as to the size, nature or effect of the major federal action rather than to the existence of a use ...". In the case at bar, it is precisely the use of the site as a sewage treatment plant, improved or unimproved, which is the source of some controversy in the neighborhood, rather than the environmental effects of the project. The Petition for Writ of Certiorari makes this abundantly clear when it states:

"The [Sewer] District was born in the controversy inherent in one community's sending its sewage to another. The controversy deepened through the years as the County plant emitted massive odors, reshaping life in the areas of Orangetown around it."

Petition at 54-55. Petitioner goes on to say that the existence of the improvement project "deepened and broad-

ened" the controversy that surrounded the plant itself. As the Court of Appeals found, in this case the record revealed that the local opposition to the project's effects grow out of "mere speculation that the plant expansion will increase odor problems, rather than alleviate such problems," which does not amount to the sort of controversy with respect to environmental impacts that would mandate an EIS. Town of Orangetown v. Gorsuch et al., Slip Op. at 6638 (2d Cir. 1983); Petition at A-22.

To rule that any such vocal opposition makes the effects of the project "highly controversial" according to the terms of the CEQ guidelines, "would require an impact statement whenever a threshold determination dispensing with one is likely to face a court challenge

[and would] surrender the determination to opponents of a federal action, no matter whether [the project is] major or not, nor how insignificant its environmental effects might be." Rucker v. Willis, 484 F.2d 158, 162 (4th Cir. 1973). See also Town of Orangetown v. Gorsuch et al., Slip Op. at 6638 (2d Cir. 1983); Hanly v. Kleindienst, 471 F.2d at 830 n.9A; Fund for Animals v. Frizzell, 530 F.2d 982, 988-89 n.15 (D.C. Cir. 1975). The ruling on this issue by the Court of Appeals is therefore grounded in, rather than inconsistent with, relevant case law. The Court did not establish a new standard for decision; it simply analyzed the facts of this case in light of established standards, and supported the EPA decision not to require an EIS.

No issue remains which would demand the consideration of this Court.

CONCLUSION

On the basis of the foregoing, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

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270:101

APPENDIX

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
Region II
26 Federal Plaza
New York, New York 10278

August 29, 1980

To All Interested Govern-
ment Agencies and Public
Groups:

In accordance with the procedures for
the preparation of environmental impact
statements, an environmental review has
been performed on the proposed agency
action below:

Project Name: Rockland County Sewer
District No. 1 (RCSD No.
1) sewage treatment plant
expansion, sludge hand-
ling facilities and in-
terceptor sewers.

Project Numbers: C-36-744-03 (Step 2
Grant)
RCSD No. 1

C-36-1253-01 (Step 2
Grant)
Town of Ramapo

Purpose of Project: The purpose of this pro-
ject is four fold: to re-
place failing individual
septic systems in Ramapo
with collection sewers;
to provide interceptor
sewers to convey sewage

from the Towns of Ramapo and Clarkstown to the RCSD No. 1 STP; to expand the overloaded RCSD No. 1 STP to treat existing and future flows from the proposed service area; to provide facilities to process sludge from the RCSD No. 1 STP.

Project
Location:

Towns of Ramapo, Clarkstown and Orangetown, New York

Project
Description:

Preparation of plans and specifications for construction of collection sewers, interceptor sewers, pump stations, STP expansion and sludge handling facilities as described in detail in Section IV of the attached environmental assessment.

Proposed
Eligible
Project
Costs:

\$3,758,380 -
RCSD No. 1

\$ 674,000 -
Town of Ramapo

EPA Grant
(75%):

\$2,858,630 -
RCSD No. 1

\$ 506,000 -
Town of Ramapo

Our environmental review of this project indicates that no significant environmental impacts will result from the proposed action. Consequently, we have made a preliminary decision not to prepare an environmental impact statement (EIS) on the project.

This decision is based on a careful review of the engineering report, the environmental information document, and other supporting data. All of these documents, along with the environmental assessment, are on file at the EPA regional office, where they are available for public scrutiny upon request. A copy of the environmental assessment is enclosed for your review.

Both the State of New York and the EPA recognize that this project is located in an Air Quality Control Region (AQCR). This fact has been accounted for in our review.

Comments supporting or disagreeing with this decision may be submitted to the EPA for consideration. All comments must be received within thirty (30) calendar days of the date of this finding of no significant impacts (FNSI). Please address your comments to the Chief, New York and Virgin Islands Section, Environmental Impacts Branch, Room 400. After evaluating any comments received on the project, the EPA will make a final decision. However, no administrative action will be taken on the

project for at least thirty (30) calendar days after the date of this FNSI.

Sincerely yours,

Charles S. Warren
Regional Administrator

Enclosure

Environmental AssessmentI. Project Identification

Project Name: Rockland County Sewer District No. 1 sewage treatment plant, sludge handling facilities, and interceptor sewers

Town of Ramapo collection sewers

Name and Address of Applicants: Mr. Charles S. Stewart, Jr., P.E. Executive Director Rockland County Sewer District No. 1 4 Route 340 Orangeburg, New York 10962

Project Numbers: C-36-744-03 (Step 2 Grant), Rockland County, New York
C-36-1253-01 (Step 2 Grant), Town of Ramapo, New York

Project Location: Towns of Ramapo, Clarkstown and Orangetown, New York

II. Description of Facility Planning Area

The facility planning area is located in

the Towns of Clarkstown and Ramapo, approximately 50 kilometers (30 miles) from New York City (see Figure 1). It encompasses approximately 190 square kilometers (75 square miles), representing the unincorporated parts of the towns. Although the Rockland County Sewer District No. 1 sewage treatment plant (RCSD NO. 1 STP), which receives flows from Ramapo and Clarkstown, is located in Orangetown, Orangetown does not contribute flows to the RCSD STP and thus is not included as part of the planning area.

The facility planning area is characterized by gently rolling hills and valleys. There are five natural drainage basins within the area defined by the names of the respective bodies of water as follows: Mahwah River, Minisceongo Creek, Saddle River, Pascack Brook and Hackensack River. The planning area has a rich diversity of inland wetlands, many of which are associated with its creeks, streams and rivers. As discussed in Section VII-B of this environmental assessment, grant conditions are being used to prohibit hook-ups to the proposed sewer system from future development located in wetland and floodplain areas.

Land use in the planning area is predominantly residential, with industrial and commercial development along the major roadways, railroads and waterways. The population of the planning area is projected to increase from approximately

160,000 to 201,000 over the 20 year design period of the proposed sewerage facilities. The population projections are based on recent development plans, zoning, and a constraints analysis which excluded environmentally sensitive areas (such as wetlands, floodplains, agricultural lands and steep slopes) from development. These projections are lower than the population projections, prepared by the New York State 208 Water Quality Management Plan.

Large portions of the planning area are currently served by collection and interceptor sewers and pump stations and forcemains. Unsewered portions of the planning area are served by individual on-site disposal systems. Existing (and proposed) sewers are tributary to the existing RCSD No. 1 STP which discharges treated effluent to the Hudson River. Some existing sewers also convey wastewater to the Town of Ramapo, privately operated treatment plants and to the Haverstraw Joint Regional Sewerage Board facilities. Sludge resulting from wastewater treatment at the STP is currently disposed of at the Clarkstown sanitary landfill.

III. Purpose and Need for Project

The purpose of this project is four fold: to replace failing individual septic systems in Ramapo with collection sewers; to provide interceptor sewers to convey sewage from the Towns of Ramapo and Clarkstown to the RCSD No. 1 STP; to expand the overloaded RCSD No. 1 STP; to

provide facilities to process sludge from the RCSD No. 1 STP.

Collection sewers

Existing on-site subsurface disposal systems in Ramapo are failing because of impermeable soils, shallow depth to bedrock, small lot sizes or seasonal high water tables. Surface discharges of raw sewage as a result of these conditions are causing odor problems, represent a public health hazard and are degrading the quality of surface waters in the area. Collection sewers are proposed to replace these failing on-site systems (see Figures 2, 3, 4, 5, and 6).

Interceptors

Interceptor sewers are required to convey sewage from the proposed collection areas as well as from eight small public and private STPs in Ramapo to the RCSD No. 1 STP (see Figures 7, 8, and 9). In addition, some of the interceptors will also facilitate gravity conveyance of wastewater thereby eliminating existing pumping stations. Cost-effective analyses found it less expensive to abandon the eight STPs and treat their flows at an expanded RCSD No. 1 STP than to upgrade and expand the small STPs.

RCSD No. 1 STP Expansion

The RCSD No. 1 STP has a design capacity to treat 3,800 cubic meters (10 million gallons per day) but present wastewater flows substantially exceed this quanti-

ty. A large part of the excessive flows at the plant is due to the infiltration of groundwater and inflow of stormwater (I/I) into the interceptor and collection system. On May 30, 1980, the U.S. Environmental Protection Agency (EPA) issued a finding of no significant impact/environmental assessment (FNSI/EA) for the design and rehabilitation of a portion of the sewer system where it is cost-effective to remove I/I rather than treat it at the STP. As part of the project presently being proposed, the RCSD No. 1 STP will be expanded to 8,500 cu m (25 mgd) to handle existing and future sewage flows from the proposed service area as well as I/I that is cost-effective to treat rather than remove from the sewer system (see Figure 11).

Sludge Handling Facilities

The existing sludge handling facilities at the RCSD No. 1 STP are inadequate to process the increased sewage flows at the plant. Under the proposed project, sludge will be composted at the Clarkstown sanitary landfill site and land applied as a soil conditioner within Rockland County (see Figure 12).

IV. Detailed Description of Selected Plans

Interceptors

The proposed project consists of the Mahwah River Basin, Minisceongo Creek Basin, and Phillips Hill Road-Conklin Road interceptor systems and the Upper

Main Interceptor. The Mahwah River Basin is located in the western portion of the sewer district and encompasses about one third of the Town of Ramapo. The Mahwah interceptor system will serve eleven schools and an existing residential population of approximately 10,000 people. It will eliminate two existing pump stations and three existing STPs. As can be seen in Figure 7, it will consist of seven interceptors: the Mahwah, Pomona Heights, Wilder Road, Willow Tree Road, Grandview Avenue, Viola Road and Montebello Road interceptors. The interceptor system will require seven pump stations and consist of 2.5 km (7.5 mi) of gravity sewer ranging from 20 cm (8 in) to 75 cm (30 in) in diameter and 0.9 km (2.8 mi) of forcemain.

The Minisceongo Creek Basin is located in the northeastern portion of the Town of Ramapo and encompasses two thirds of the Village of Pomona. The Minisceongo interceptors will serve eight hospitals and schools and an existing population of 2,200. It will provide for a portion of the village which currently connects to the Haverstraw STP to tie into the RCSD No. 1 STP. This system will consist of the Pomona, Mount Ivy North and Summit Park interceptors (see Figure 8). It will require three pump stations and consist of about 9 km (3 mi) of gravity line ranging from 20 cm (8 in) to 45 cm (18 in) in diameter and 0.6 km (2 mi) of force main.

The Phillips Hill Road interceptor will provide service to a portion of the Town

of Ramapo and Clarkstown located east of Palisades Interstate Parkway (see Figure 9). This interceptor will provide capacity for an existing population of 1,140. It consists of 1.5 km (0.9 mi) of gravity sewers and does not require any pump stations.

The Conklin interceptor will provide service to an existing population of 233 in the northeast corner of the Town of Ramapo and the northwest corner of Clarkstown (see Figure 9). This interceptor will require one pump station and consist of 2.2 km (1.4 mi) of gravity sewer and 0.6 km (.4 mi) of forcemain.

The Upper Main Interceptor will convey flows from the western portion of the sewer district to the RCSD No. 1 STP. The interceptor is required to augment the existing upper main interceptor which, because of groundwater I/I and future flows from western portions of the district, will exceed its design capacity by 1,100 cu m p/d (3 mgd). The proposed pressure main consists of approximately 3,050 m (9,350 ft) of 40 cm (16 in) diameter pressure interceptor.

Collectors

The recommended lateral collection sewer system projected by the Town of Ramapo consists of approximately 186,600 ft (55,890 m) of 20 cm (8 in) gravity sewer, three pump stations, 600 m (5,300 ft) of forcemain, 23 grinder pump units and 960 m (3,200 ft) of lower pressure main. Of the above 16,500 m (55,060 ft)

of gravity sewer and 170 m (440 ft) of forcemain and one pump station have been found to be ineligible for federal funding.

RCSD No. 1 STP Expansion

Following is a list of the principal units which will be added or modified to expand the capacity of the RCSD No. 1 STP to 8,500 cu m (25 mgd). These units will be added directly adjacent to the existing facilities.

1. Main pumping station modified by an additional larger pump
2. Aerated grit chamber
3. Six primary settling tanks
4. Air driven rotating biological contactors (RBC) to provide secondary treatment. In addition, existing aeration tanks will be modified to accept RBCs.

Sludge Handling Facilities

On-site sludge handling at the RCSD plant will be accomplished by the addition of the following principle units.

1. Two gravity thickeners to thicken sludge from RBCs. The thickeners will be enclosed to provide odor control.
2. Conversion of existing secondary digester to a primary digester.

3. 30 m (90 ft) diameter unheated digested sludge storage tank.
4. Containerized methane gas storage
5. 450 kw generator for electricity generation from methane gas utilization.
6. Three belt presses for dewatering sludge and two grit cyclone classifier units for screening and separation.

Dewatered sludge will be hauled in water tight trucks to the Clarkstown landfill sludge composting facility. The composting site, which will use static-pile composting, will be designed as follows.

1. Composting operations will occur on concrete and asphalt pad covering 1.5 ha (3.5 a) of the site.
2. Landfilled material will be removed prior to construction of pad.
3. Pad will be contoured so that leachate will drain to retention ponds.
4. The ponds will be sized to accommodate runoff resulting from a ten year, 24 hour storm.
5. The ponds will discharge leachate (via pumping) to 210 m (700 ft) sewer connecting to RCSD No. 1 STP for treatment.

6. Composting operation will be conducted within enclosure with three walls and roof. Covered compost facility will have capacity to provide up to six months storage of compost.
7. Gravel access road approximately 450 m (1,500 ft) will be constructed.

Composted sludge will be applied as a soil conditioner to designated lands in the county. Potential outlets for composted sludge include landscaping and nursery operations.

V. Project Costs

The following are the approximate costs associated with the design of sewage collection, conveyance, treatment and disposal facilities for RCSD No. 1 and the Town of Ramapo.

Town of Ramapo Collectors:

Total Cost - \$1,045,500
 Eligible Cost - \$689,000
 EPA Grant (75%) - \$858,630

RCSD No. 1 Interceptors, Pump Stations, Forcemains, STP Expansion and Sludge Handling Facilities:

Total Cost - \$4,577,380
 Eligible Cost - \$3,758,380
 EPA Grant (75%) - \$2,858,630

The following are the estimated total project costs for construction of the proposed facilities including the above design costs.

	<u>Total Cost</u>	<u>Eligible Cost</u>
Collectors	\$20,600,000	\$13,185,000
Interceptors, Pump Stations, and Force mains	31,000,000	30,310,000
STP Expansion and Sludge Handling Facilities	68,389,000	67,101,000
TOTAL:	\$119,989,000	\$110,596,000

The total annual user charges to residents within the Town of Ramapo is estimated to be \$308.00. The total annual user charge to a resident within the RCSD No. 1 service area will be approximately \$100.00.

VI. Evaluation of Alternatives

No Action

The "no-action" alternative consists of the continued use of individual on-site treatment systems in Ramapo as well as the overloaded RCSD No. 1 STP and its sludge handling facilities. This alternative was rejected due to the existing need for improvement of water quality

and alleviation of health hazards in the service areas.

Collection System

Upgrading of on-site systems was not considered feasible because of soil conditions, high groundwater and shallow depth to bedrock. A sewage collection system is the most cost-effective alternative except in three small areas where adverse topography makes grinder pumps cost-effective.

Interceptors

Mahwah - All of the six alternative routings considered for the Mahwah interceptor consist of a major interceptor generally paralleling the Mahwah River with secondary interceptors discharging into the main interceptor (Mahwah). The proposed routing was selected because it minimizes secondary growth impacts by limiting the service area of the interceptor as much as possible to those areas which are in need of sewers and to which future growth is expected and planned for. In addition, this alternative is set back from the Mahwah River and thus avoids the construction impacts associated with the other alternatives that closely parallel the river. It is also the least expensive of the six alternatives.

Minisceongo - Of the two alternatives considered to serve this area, the proposed route (alternative 2) was found to be most cost-effective and environmen-

tally sound. This alternative will avoid much of the wetland and floodplain, and easements that would be required with alternative 1.

Phillips Hill Road - The original proposal called for the placement of the interceptor in the cul-de-sac between Kingsland Drive and Buena Vista Road and then following Kingsland Drive east. Under this proposal the interceptor would cut across a wetland at the end of Kingsland Drive and connect into and follow Phillips Hill Road until Rollingwood Drive. The present proposal will utilize existing laterals in Buena Vista Road and Kingsland Drive that connect to the Balter Road pump station. A gravity interceptor will connect the pump station to the Rollingwood Road cul-de-sac. This route was selected because it avoids wetlands, eliminates the Balter Road pump station and was approximately \$60,000 less expensive than the next least expensive alternative.

Conklin Road - Six alternative routings were considered to serve the Conklin Road area in the Town of Ramapo. Four of the alternatives included placing sewage lines in or adjacent to Buena Vista Road in the Town of Clarkstown. As discussed in Section VIII, residents of Clarkstown opposed the presence of an interceptor sewer in Buena Vista Road or Saw Mill Road because of the potential secondary impact to the undeveloped land along these routings. A fifth alternative consisted of pumping sewage from the Conklin Road area under the Pali-

sades Park interceptor. This alternative was rejected because it required three additional pump stations and the residents of Dogwood Lane objected to the routing. The proposed alternative which follows a route primarily through the Town of Ramapo was found to be the most cost-effective alternative.

Lake DeForest - An interceptor was proposed to serve the Lake DeForest area. The interceptor was rejected because of primary and secondary impacts to wetlands, streams, active orchards and agricultural land, water supply, steep slopes and secondary growth woodland and because it did not meet EPA requirements for eligibility. The proposed interceptor is still planned for construction with local funding.

Upper Pressure Main Interceptor - This interceptor will parallel the entire 3,050 m (9,350 ft) length of existing pressure interceptor which is located adjacent to a railroad right-of-way. As the right-of-way has been previously disturbed, there will only be minor impacts from the construction of this interceptor.

RCSD No. 1 STP Expansion

A number of alternative sites were evaluated for the expansion of the RCSD No. 1 STP. These alternatives consisted of the following: locating the expansion facilities away from the immediate location of the STP; building a second STP at another location; and rearranging the

expansion facilities at the existing STP site to minimize impact to wetlands adjacent to the STP. The first two alternatives were rejected because of the extremely high cost, the greater manpower and unit operations, and the additional interceptors that would be necessary for sewage conveyance to a new facility with the alternatives.

Several alternative arrangements of the STP expansion at the existing site were evaluated to minimize impact to the wetlands that are located directly north and south of the STP. Locating the new secondary treatment unit to the east of the STP in mixed hardwood area was rejected because of the large additional cost (3.5 million present worth) of pumping to this upland area. As the west side of the STP is close to Route 303, expansion in this direction was not possible. The original proposal of placing the administrative building and equipment garage to the north in a flooded shrub wetland along with an additional access road cutting through steep slopes was rejected in favor of the present proposal. This involves placing the administration building, and equipment garage in the hardwood area to the east of the STP and eliminating the additional access road. As with the original proposals, the new treatment units are located north of the existing facilities (see Figures 10 and 11).

Sludge Handling Facilities

Joint sludge facility with Orangetown

STP.

A detailed cost analysis determined that cost savings for a RCSD No. 1 - Town of Orangetown sludge handling facilities would not be significant when implementation schedules for joint and individual alternatives were considered. It was estimated that a joint facility would require one additional year for implementation compared with individual alternatives. Consequently both RCSD No. 1 and Orangetown decided it was in their best interest to pursue individual sludge handling alternatives.

Land Application

Land application of digested dewatered sludge without composting was not considered environmentally acceptable as large quantities of filter cake would have to be stored during portions of the year when, for climatic reasons, land application is not possible. Composting in conjunction with land application was selected because the composting operation can be carried out year round and because compost can be stored for long periods without adverse environmental effects.

Composting Sites

Six composting sites were evaluated (see Figure 12). The Route 303 industrial site was rejected because of its proximity to office buildings, limited amount of land, high land acquisition cost and

traffic problems. The site on Route 303 in Orangetown was eliminated because it would require the loss of a large area of wooded wetlands. In addition, the small parcel of land that is not environmentally sensitive on the site is planned for future construction. The Ramapo incinerator site was rejected because of the long travel distance to the site and the proximity to residences.

Although three remaining sites were considered feasible for composting, the Clarkstown landfill site was selected because it represents the site with least potential adverse impacts. The Congers Lake site offers ample area to locate, and is close to RCSD sewer lines. However, extensive clearing and a long access road over the Hackensack River would be required. Under this alternative, the Route 9W site was rejected because it would require clearing a heavily wooded area and is relatively near homes and business.

VII. Environmental Consequences of the Selected Plan

Collection Sewers

Approximately 90 percent of the collection system will be located in existing roadways right-of-ways. Limited use of rights-of-way will be necessary where topographical constraints preclude roadway routings and where land will be used for pump station sites.

The use of rights-of-ways will avoid long term impacts and minimize secondary impacts. Temporary disruption of traffic and noise related to construction activity will be a short-term nuisance.

All routings through or adjacent to wetlands have been eliminated from the proposed project. Where stream crossings are necessary, the contractor will be required to comply with New York State Stream work standards. In addition, the contractor will be required to follow environmental specifications concerning protection and replacement of trees and erosion and sedimentation control.

Interceptors

Mahwah River Basin

Although a number of modifications have been made to the proposed routing, the Mahwah interceptors will border and cross wetlands, floodplain and steep slopes at various points. Between Bayard Lane and Victory Road, the alignment of the Mahwah interceptor has been shifted to the east side of the Mahwah River to avoid the very steep slopes on the east side of the river. However, between Victory Road and Hemion Road, the interceptor will cross the river twice and cross and border the wetland along Route 202.

The Grandview Avenue interceptor will also border and cross wetlands and floodplains along Spook Rock Road and

Grandview Avenue between Carrol Drive and Wesley Chapel Road.

The Viola Road interceptor will border a small wetland and cross and floodplain between Mile Road and Route 202. This interceptor will cross an area of undeveloped land, potentially inducing development in this area. No alternative was available that would avoid these secondary impacts.

The Montebello Road interceptor traverses a wetland between Robin Hood Road and Nottingham Road. The routing has been modified to move the alignment away from the creek, steep slopes and wooded areas as much as topographical constraints allow.

As discussed in Section VII-B, the contractor will be required to follow a number of special environmental constraints to protect wetlands along the proposed route. As with the collectors, the contractor will be required to use construction measures to reduce erosion and sedimentation, protect and replace trees, and restore disturbed areas to their original condition.

In addition, grant conditions are being used to prohibit hook-ups to the proposed sewer system from future development in wetlands and floodplains.

Minisceongo Interceptors - Sewer crossings of the south Minisceongo River will be required north of the Pomona pumping station and along Route 202 (east of

Camp Hill Road). The contractor will be required to follow stream crossing standards to protect the stream and wetlands located downstream.

The Pomona interceptor will parallel the creek along Adele Boulevard between New Hempstead Road and Scotford Lane. The routing has been moved to the west side of the creek to avoid steep slopes and mixed hardwood on the east side. This routing will traverse a flat brush area before cutting to the east side of the creek at Scotford Lane.

Phillips Hill Area - As discussed under the alternatives section, the proposed Phillips Hill interceptor alignment was selected because it avoids impacts to wetlands. Although this routing will be designed to minimize impact to a small woodland which it traverses, some trees may have to be removed. The contractor will be required to follow tree replacement specifications.

Conklin Road Area - The primary impact associated with the proposed routing is the secondary impact of crossing a mixed hardwood forest between the southern end of Carteret Drive and Buena Vista Road. Although the interceptor is sized at the minimum possible diameter 20 cm (8 in), it will contain sufficient excess capacity to allow development of the wooded area to hook up to it. Development of this area is likely with or without sewers as new residential development is currently making large inroads into the wooded area. Alternatives to the pro-

posed alignment which would avoid traversing the wooded area by paralleling Buena Vista Road were opposed by the Town of Clarkstown because of the secondary impacts that such an alignment would pose to the Buena Vista Road area.

RCSD No. 1 STP Expansion

The expansion of the STP will require the following loss of wetland to the north of the STP and mixed hardwood to the east of the STP (see Figure 10).

Gross Area Area Taken By
(Within Existing STP Construction
Property Boundary)

(hectares) (acres) (hectares) (acres)

Reeds	2.21	5.31	1.50	3.60
Flooded				
Shrubs	0.58	1.30	0.18	0.43
Flooded				
Deciduous				
Tree	.01	.26	0.003	.43
Wret				
Meadow	1.25	2.46	---	---
Mixed				
Hardwood	1.83	4.40	.73	1.74

Approximately half of the reedgrass wetland to be taken by construction has been disturbed by present construction activities at the plant site.

The expansion will also require that the natural wetland drainage channel to the east of the STP be replaced with a cul-

vert. As compared to the disturbance of wetlands by the underground interceptors, the proposed expansion will represent a permanent loss of wetland habitat for wildlife in this area. As discussed in the previous section of this report, the cost of alternatives that would avoid impact to wetlands (i.e., constructing new STP) were found to be prohibitive. Of the alternative expansion layouts considered, the proposed arrangement was selected because it minimizes the loss of wetlands.

Construction on the northern side of the STP will pose potentially severe short-term impacts to the Sparkill Creek which traverses the northern edge of the site. Clearing and grubbing could cause heavy siltation of rivers and dewatering operation could seriously reduce the streamflow of the creek especially during periods of low flow. As part of the special environmental specifications, the contractor will be required to restrict clearing and grubbing to the minimum easement, stay back from creek banks and recharge the creek with filtered water from the construction area.

Sludge Handling Facilities

Clarkstown Landfill Site - Composting

The site is located in the Hackensack River Drainage Basin. The nearest major tributary is Greenbush Brook, a Class "C" waterway (suitable for fishing) that runs north to south along the western border of the landfill. A connecting

tributary to the north drains the composting site. This tributary is several hundred feet from the site and is designated a Class "D" waterway (suitable for industrial or cooling uses). The water assimilates and collects runoff from the landfill and the urbanized areas along Route 303.

All effluent from composting operations, including leachate from composting piles and washdown water, will be collected in a water retention pond and discharged to a sanitary sewer on Greenbush Road. The retention ponds will be sized to accommodate runoff resulting from the once in 10 year, 24 hour storm. Neither water quality nor uses of adjacent waterways will be adversely affected by composting at the site.

The location of the composting facility at the site will be compatible with the adjacent use of the site for a sanitary landfill. Since the area is presently used as a waste processing area, a composting facility will not alter the actual or perceived use of the site.

Potential Compost Application Sites

The compost market survey identified a number of potential compost users in Rockland County, such as landscapers and nurseries. In addition, potential compost use as a cover material for the Clarkstown landfill has been proposed.

Currently, no agricultural land is planned to be used for application of com-

posted sludge. Should agricultural land be considered at a later time, sludge applications would be limited to lands used to grow field crops and application rates would be subject to U.S. Department of Agriculture guidelines for sludge application rates. Periodic groundwater monitoring will be required to assure that leachate is not contaminating the groundwater.

Water Supply

Almost 90 percent of the population of Rockland County is served by the Spring Valley Water Company which gets its supply primarily from Lake DeForest on the Hackensack River, and a reservoir in Stony Point and from an extensive groundwater system. Because of a decrease in population projections over the next 40 years, the water supply which presently exists in the county will be adequate into the foreseeable future. However, there are alternative sites that are available for developing new sources of water supply should the need arise.

Under the proposed project, water that has its origin in one of the river basins in the sewer district will be transferred to another basin when it is treated and discharged. In addition to household water, groundwater I/I enters the sewers from all the basins. The existing and proposed sewer system discharges the water from these basins to the Hudson River.

The present interbasin transfers within the sewer district have not been shown to have a negative impact on the environment through reductions of flow streams. The proposed elimination of as much I/I as is cost-effective will reduce such transfers to a minimum, possibly resulting in an overall reduction in interbasin transfer even with the proposed sewer system. Thus, the proposed project will have no adverse impact on water flows in the different river basins.

Air Quality

The study area is within the New York State designated Southern Tier East Air Quality Control Region (AQCR).

At present, only the National Ambient Air Quality Standards (NAAQS) for photochemical oxidants are being contravened within the AQCR. A State Implementation Plan has been prepared by New York State which provides for the attainment of the NAAQS within the AQCR. An analysis has shown that the proposed project will not by itself result in contravention of NAAQS.

There will be localized dust and exhaust emissions from construction equipment. These will be mitigated by the proper construction specifications. Operation of the facilities should not result in odors beyond the STP site.

Noise Levels

Noise levels will be high for short-term

periods (during construction), but will be localized around construction sites. The contractors will be responsible for not exceeding the Occupational Safety and Health Act (OSHA) standards for noise exposure on a daily basis.

In conformance with the Advisory Council of Historic Preservation Procedures, the EPA must investigate the cultural resources located within the project area that would be affected by construction of the proposed facilities. A cultural resource investigation has shown that there are no resources within the project area which are on or eligible for inclusion on the National Register of Historic Places which will be affected by the proposed construction.

Population and STP Design

The population of the planning area is projected to increase from approximately 160,000 to 201,000 over the 20 year design period of the proposed sewerage facilities. The population projections are based on recent development plans, zoning, and a constraints analysis which excluded environmentally sensitive areas (such as wetlands, floodplains, agricultural lands and steep slopes) from development. These projections are slightly lower than the population projections, prepared by the New York State 208 Water Quality Management Plan. The increased capacity of the proposed STP expansion is based on these population projections for the service area.

Secondary Impacts

The proposed project may cause an increase in the rate of development. However, except for the Viola Road interceptor, which conveys from the northern portion of the district, the proposed facilities provide sewers only in those areas which are either developed or where there is a strong potential for development. As discussed under "Population" the capacity of the STP is designed only to handle flows from land that is not environmentally sensitive. In addition, grant conditions are being used to prohibit the connections of future development in wetlands and floodplains to the proposed facilities.

B. Steps to Minimize Adverse Effects on the Environment

A NYSDEC permit will be required for construction of collection and interceptor system alignments crossing or parallel to streams. Where permits are required, all work in the vicinity of water bodies must meet the New York State stream work standards including specifications that will insure no reduction or disruption of stream flow which can endanger the aquatic life or obstruct passage of fish. Machinery must be operated from the stream bank, not in the stream. Except for stream crossings, all work must be far enough from the bank that it is not disturbed.

When the top of excavation is within ten (10) feet of the top of any stream bank,

the Contractor shall provide protection for the stream bank as approved by the Engineer.

Erosion and Sedimentation Control

The Contractor shall, at the direction of the engineer, use necessary methods to minimize erosion from easements and access roads, especially in stream or watercourse areas. Right-of-way at surface water crossings or drainage ways shall be protected by sandbagging, hay-baling, mulch, or the use of jute or excelsior blankets, as conditions require.

Methods of preventing erosion shall also include berms, dikes, and other temporary and permanent structures. Erosion control methods shall be employed during site clearing, construction of pipelines, and at the time of final restoration.

Air Quality

The major construction impacts will be dust and exhaust emissions. Dust will be controlled by water sprinkling and sweeping of paved areas, and mulching on unpaved areas. Natural materials, such as chippings from on-site vegetation, should be used for mulching whenever possible. The use of calcium chloride or petroleum products for dust control will be prohibited.

Wetland Construction

Where construction must take place in or

adjacent to wetlands, the contractor must adhere to the following environmental specifications.

1. Prior to the start of construction, fences and hay bales will be placed around the edge of the construction site that borders the wetland. Metal cyclone fence must be used at the STP site. All construction activity will be limited to the area behind the fence.
2. The original grading must be restored in order to maintain the original vegetation found there.
3. Manholes, where necessary in the wetland, should be located as close as possible to either end of the wetland to reduce the length and impact of the permanent access road.
4. Impervious barriers should be placed regularly across the trench to prevent water flowing down the slope of the line and draining area.
5. NYSDEC and EPA must be notified at least 48 hours in advance of construction activity.
6. The culvert being used to replace the swale must be of the same elevation as swale to allow continued wetland drainage pattern.

Tree and Shrub protection and Replacement

No trees shall be cut without the permission of the engineer or other designated authority. Trees not scheduled for removal shall be carefully protected from damage to bark by "boxing" with snow fence of boardings. Where trees are to be replaced, the replacement size schedules shall be in accordance with EPA-NYSDEC specifications.

Whenever excavation is to be performed within the root zone of trees (normally about the spread of the limbs), the contractor shall prune damaged roots or limbs over one inch diameter and prune the tree to match the undamaged root system. When the excavation is within 10 feet of trees over 38 cm (15 in) in diameter, the contractor shall tunnel under the tree.

The contractor will be responsible up to and including a one year maintenance period for the vegetation that has been damaged or replaced during construction.

Special Grant Conditions

To protect environmentally sensitive areas from development the Federal construction grants for this project will include the condition prohibiting hook-ups to the system from new development located in floodplains and wetlands. The following grant conditions will be used:

- a. The grantee shall submit to EPA and the NYSDEC an approvable facilities plan amendment including maps that clearly delineate all specific vacant parcels of land within the 100 year floodplain as defined by the U.S. Department of Housing and Urban Development (HUD), or within wetlands as defined by the U.S. Fish and Wildlife Service no later than 45 days after grant acceptance. These maps must also show which parcels had been developed prior to date of issuance of finding of no significant impact/environmental assessment (FNSI/EA).
- b. The grantee agrees that for a period of 50 years from the date of the FNSI/EA no sewer hook-up or other connections to the sewage collection system included in the scope of this grant will be allowed or permitted so as to allow the discharge of wastewater from any building, facility or other construction on any parcel of land within any wetlands or within the 100 year floodplain, which land parcel as of the date of the FNSI/EA was undeveloped (i.e., upon which no building, facility or other construction had been erected or placed) unless approved in writing by the Regional Administrator.
- c. This condition is intended to benefit any persons or private organization or governmental entity which may have an interest in the

avoidance of any future development in the designated areas. Any such beneficiary (who may otherwise have standing to seek enforcement and the right to begin such action in a court of competent jurisdiction) may seek to enforce compliance with this condition in the courts of the State of New York against the grantees or any non-Federal person, organization, or entity subject to this condition if notice of intent to seek such enforcement is first given to the EPA Regional Administrator, New York State Department of Environmental Conservation, the grantee and affected governmental entities and if none of those so noticed fails to initiate corrective action within ninety days of such notice.

- d. If the facilities plan amendment required under a. above delineates any vacant parcels which will be affected by this special condition, the grantee will conduct a public hearing within 60 days of submission of the facilities plan amendment. The public hearing must be preceded by a notice of 45 days, during which time the facilities plan amendment will be made available to the public. The public hearing record will remain open for 30 days after the hearing to allow for additional public input.

VIII. Coordination of Environmental Review and Reference Documents Consulted

a. Public Participation Program

Four public information meetings were held in three locations in the RCSD No. 1 relative to location, alignment and service area for the interceptors. One was held in Orangetown concerning the STP expansion. As a result of these meetings, major changes were made in the alignments or service provided by the Mahwah River interceptor and the Conklin Road interceptor. In response to comments from the residents of Orangetown concerning odor control, new treatment processes were reviewed with respect to elimination of odors. Review of the proposed plan resulted in the requirement that the compost facility be completely enclosed for operational and odor control reasons.

On January 28, 1980, a public hearing was held at 8:00 PM in the Clarkstown Town Hall Auditorium concerning proposed RCSD No. 1 facilities. A number of questions and objections were raised concerning the proposed project.

The most discussed issue at the hearing concerned existing and potential odors at the RCSD No. 1 STP. The following is a partial list of the measures that have been

and will be taken to deal with odor control at the STP:

1. Discontinuing use of Zimpro oxidation unit.
2. Improved process and sludge handling equipment and procedures which will minimize solids recycled in the plant.
3. Covers over the existing and proposed primary settling tanks.
4. Covered air driven rotating biological contactors which will replace the present open aeration tanks.
5. Odor control ventilation in solids handling areas and improved process control and information systems.
6. Aerated grit removal.
7. Covered and ventilated sludge thickeners.
8. Prechlorination of influent sewage.
9. Covered digester feedbox and overflow boxes.
10. Equipment redundancy will provide additional safeguards against process component failure.

The Hackensack Water company objected to the location of the composting site at the Clarkstown landfill because of possible contamination of groundwater or surface water. As discussed in Section VII, the composting facilities will be enclosed on an impervious pad. It will be contoured to collect runoff in a water retention pond which will discharge the runoff back to the STP for treatment.

The water retention pond will be sized to collect the runoff from the entire compost site that would be produced from a 10 year, 24 hour storm. In addition, the covered compost facility provides up to six months compost storage.

A number of residents asked about the possible relocation of the STP and alternatives to expansion. Although portions of the infiltration/inflow to the RCSD No. 1 STP are planned to be removed, flows to the STP due to I/I which it is not cost-effective to remove and due to the increased population, still make expansion of the STP necessary. The use of an alternate treatment site was precluded by the enormous cost that a new site (including new conveyance facilities and new outfall to river) would require.

Two residents questioned the inter-basin transfer of water that will

occur with the proposed project. As discussed in the environmental assessment, the district is comprised primarily of the drainage basins of three river systems: the Hackensack River which drains to the tidal Meadowlands, the Mahwah which drains toward the southwest to the Ramapo River and the Minisceongo which drains north and then east to the Hudson River. Water that is discharged to the existing and proposed system has its origin in more than one river basin and is used in others. In addition to household wastewater, I/I enters the sewers from all three basins. The existing and proposed system discharges water from these river basins to the Hudson River. The present interbasin transfers within the sewer district have not been shown to have a negative impact through reduction of stream flow. The proposed elimination of I/I will reduce such transfers to a minimum.

Several of the residents complained that the opportunity to speak at the public hearing did not occur until such a late hour that they had to leave before they had the opportunity to be heard. In response, the sewer district sent a copy of the responsiveness summary of the public hearing to all those who signed up to speak but did not do so. The sewer district invited these residents to submit written

comments or raise questions concerning the issues.

On July 30, 1980 at 8:00 PM a public hearing was held in the town of Ramapo Town Hall concerning the proposed Ramapo collection sewers. Several residents requested information concerning the proposed sewers that would serve them. No objections were raised to the project.

b. Federal State and Local Agencies Consulted

1. Agencies Consulted:

- U.S. Fish and Wildlife Service
- New York State Department of Environmental Conservation
- U.S. Environmental Protection Agency

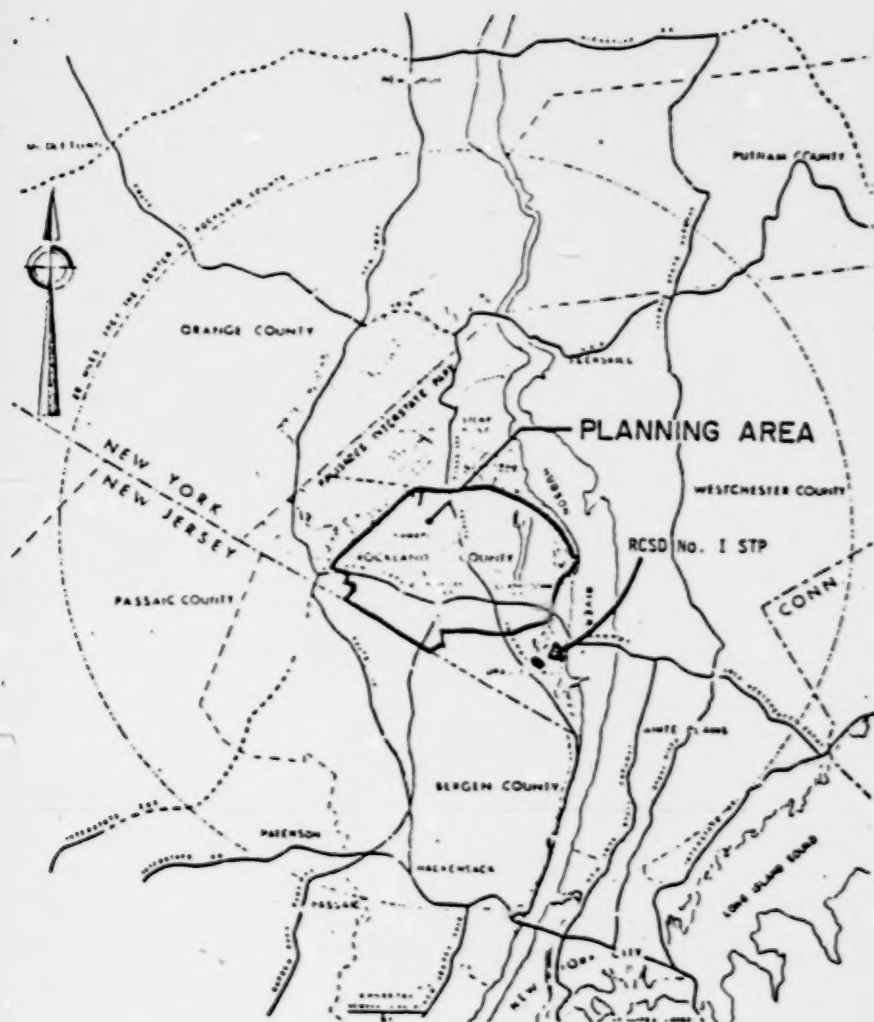
2. Documents Consulted:

- New York State Water Quality Management Plan for Rockland County
- Wastewater Facilities Plans -
 - a. Rockland County Sewer District No. 1 Interceptors, Force Main and Pump

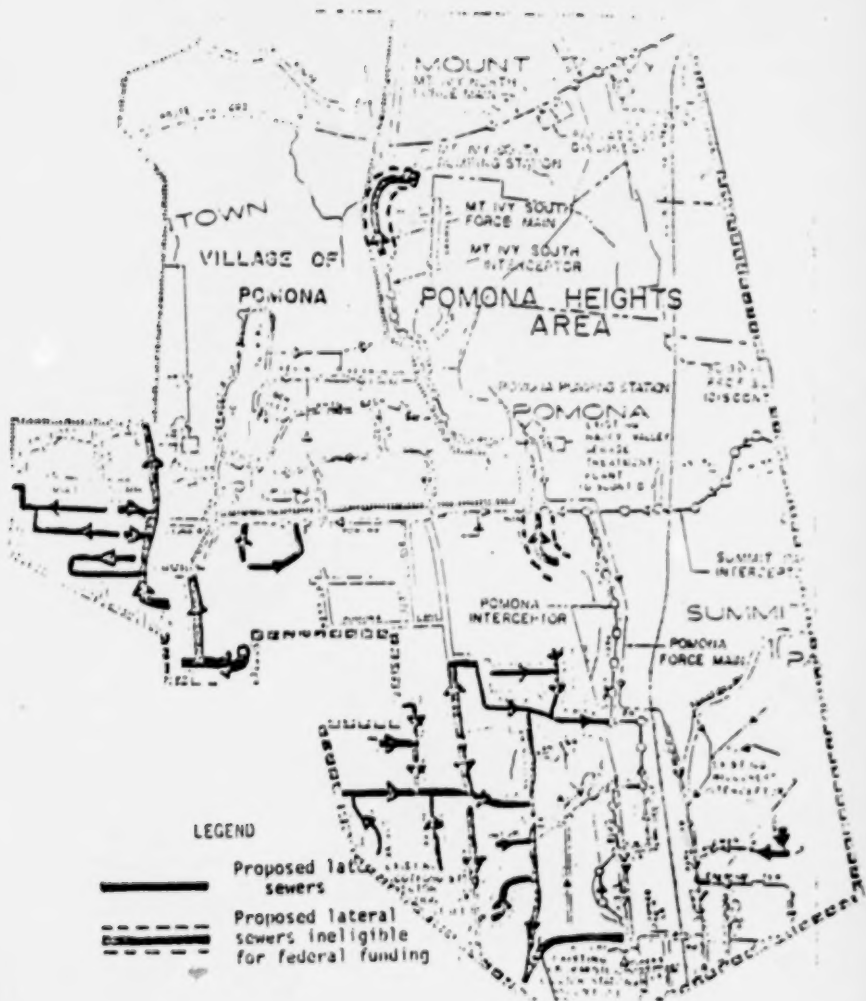
Station, Volumes 1
and 2

- b. Rockland County Sew-
er District No. 1
Sewage Treatment
Plant
- c. Rockland County Sew-
er District No. 1
Sludge Management
Report
- d. Ramapo Extension to
Collection System

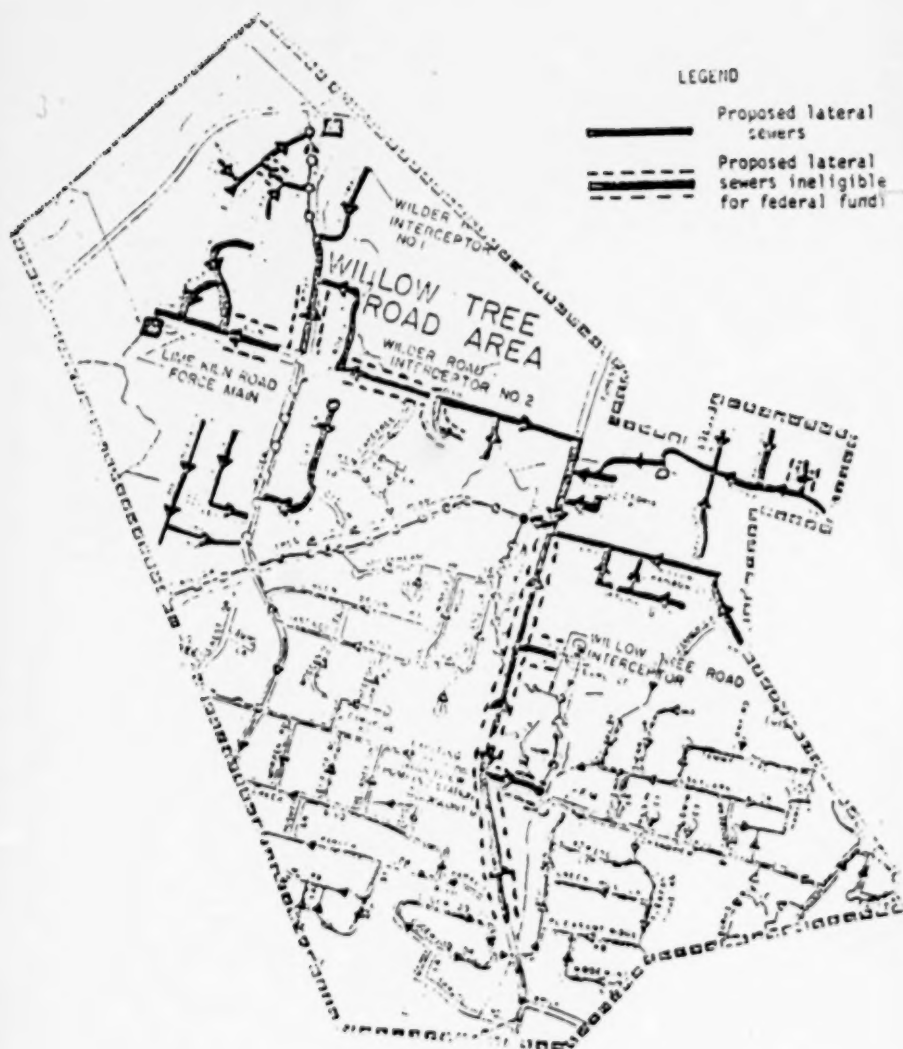
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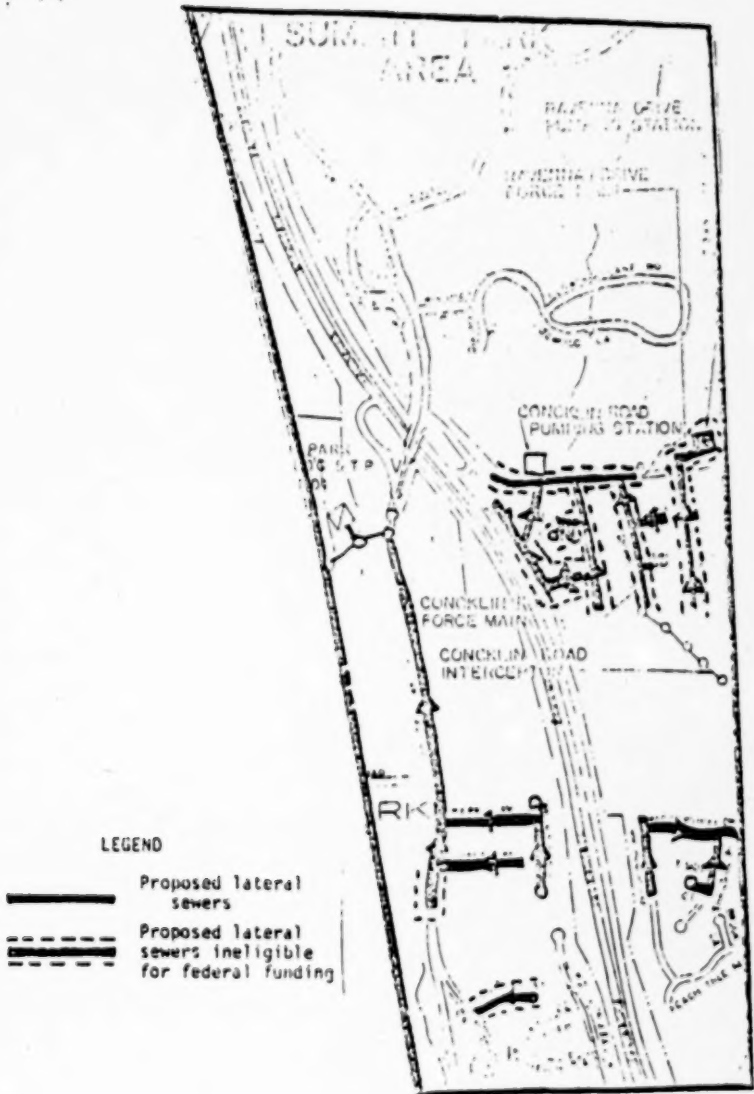
LOCATION PLAN



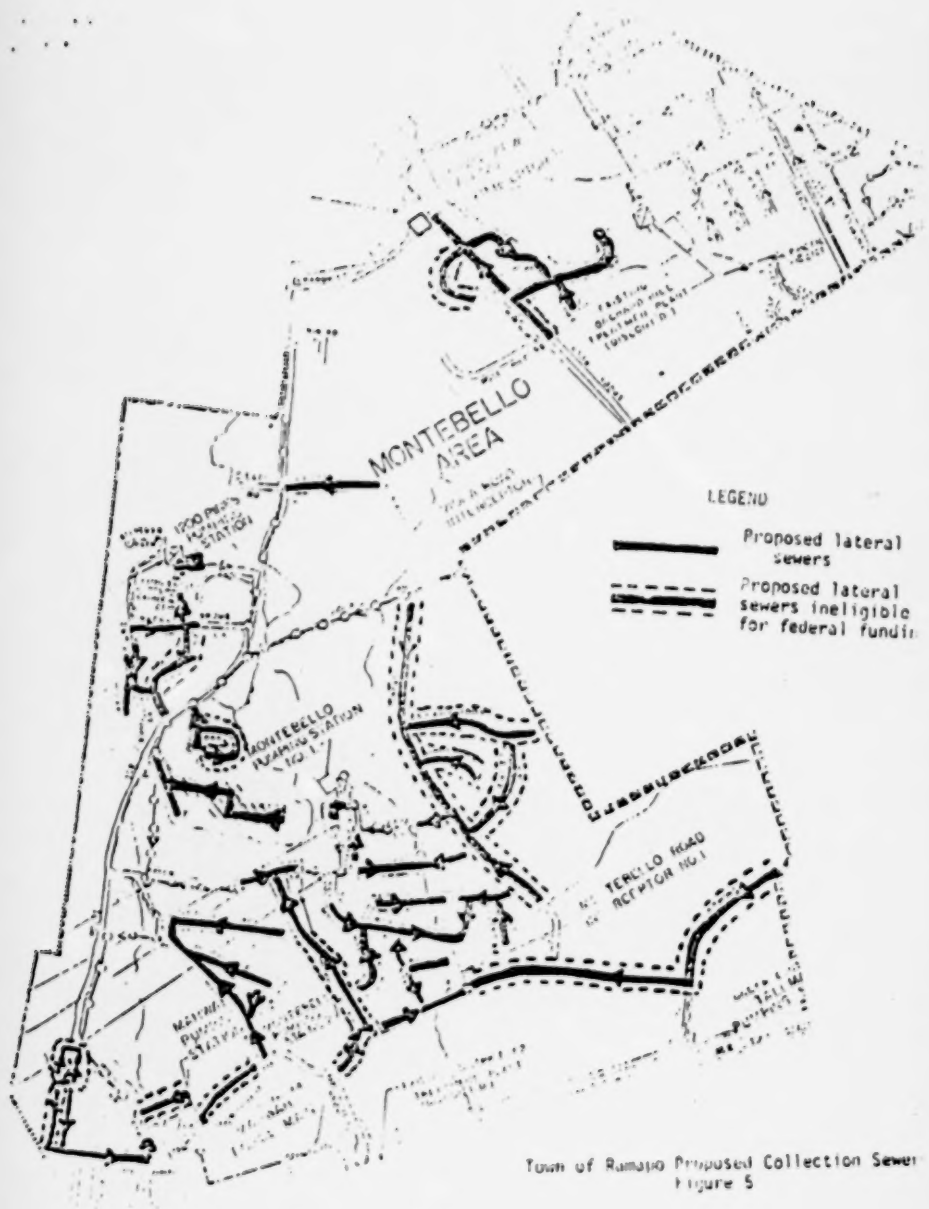
Town of Ramapo Proposed Collection Sewers
Figure 2



Town of Ramapo Proposed Collection Sewers
Figure 3



Town of Ramapo Proposed Sewerage Collection System
Figure 4



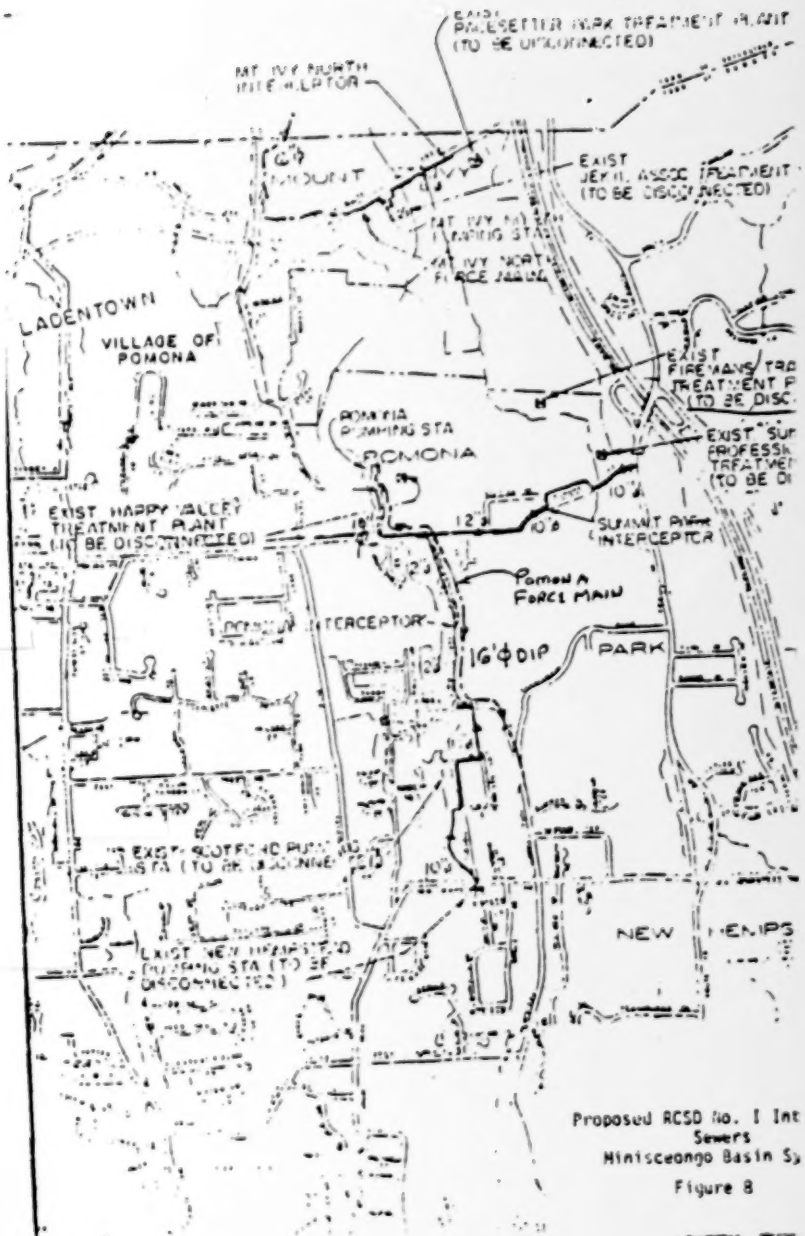


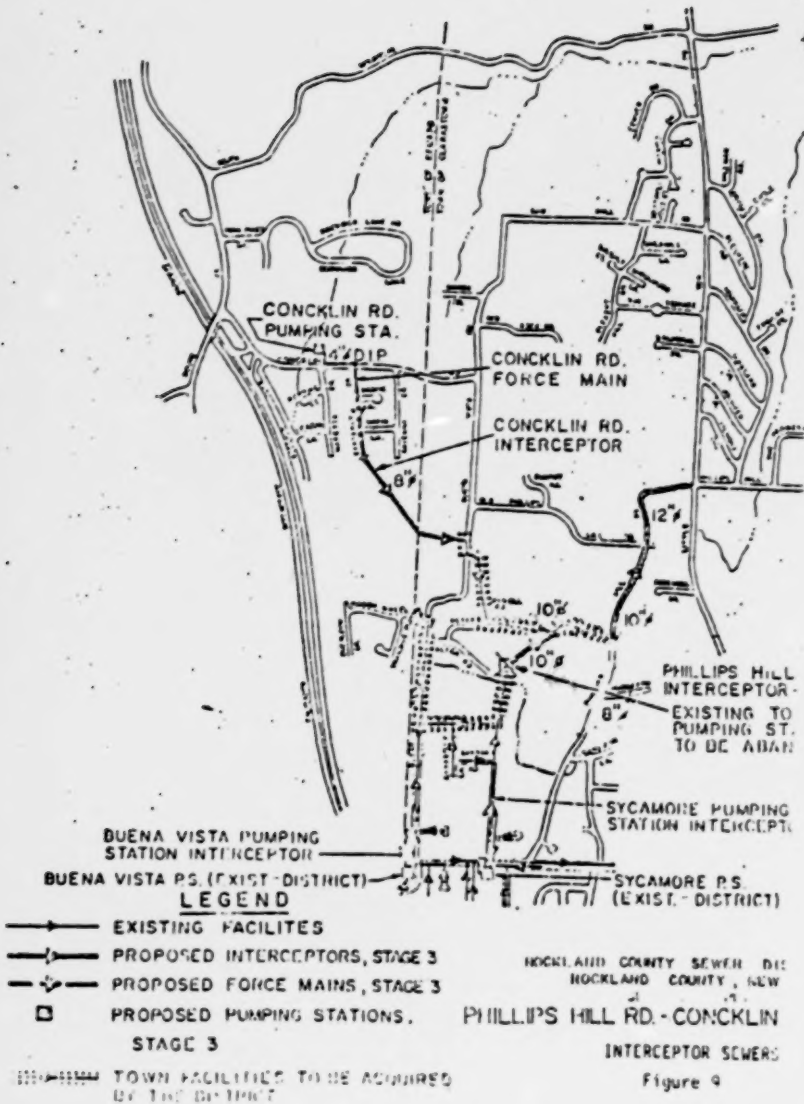
Town of Ramapo Proposed Collection Sewers
Figure 6

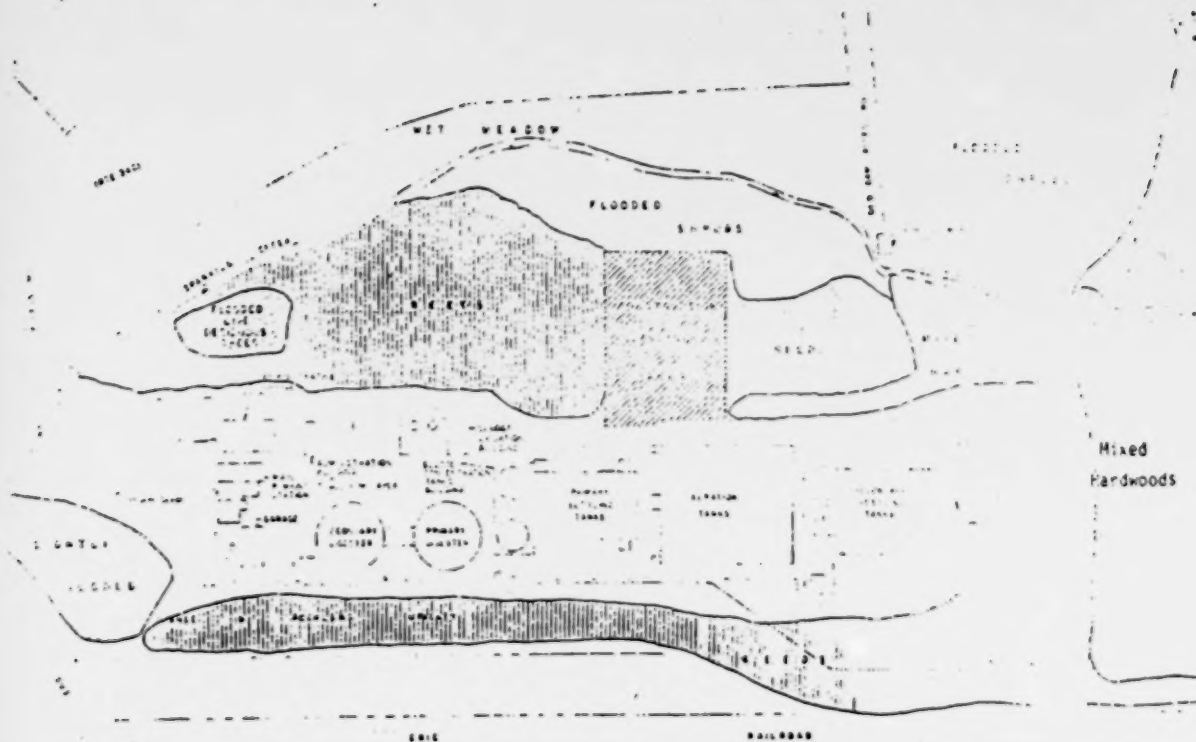


Mahwah Basin Interceptor Sewer System
RCSD No. 1

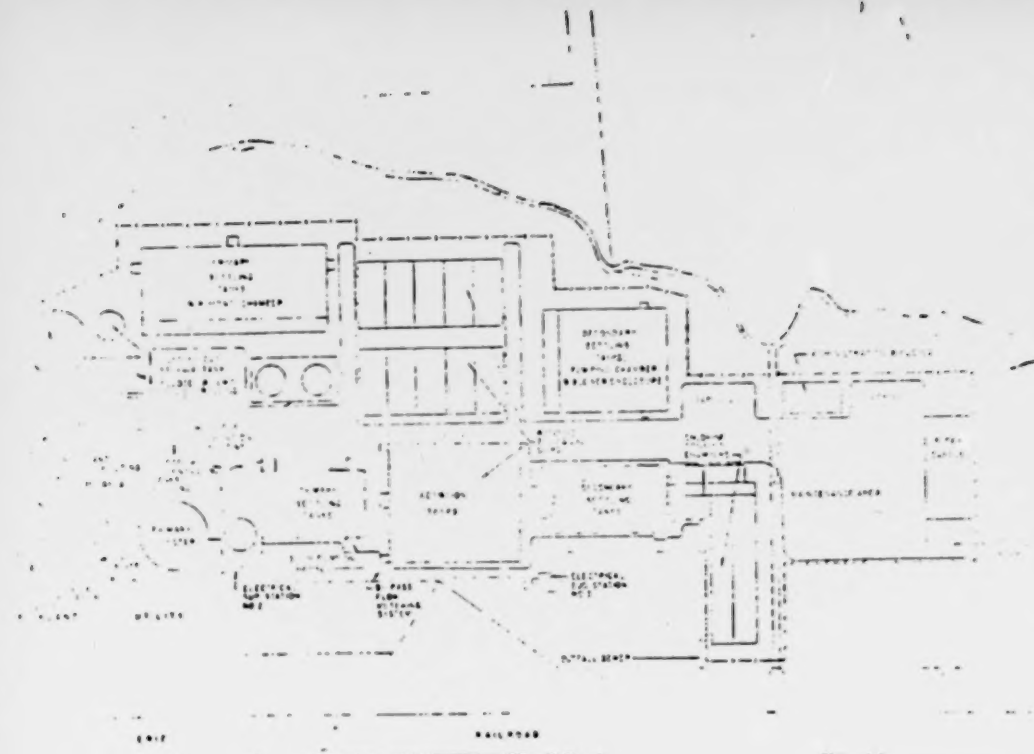
Figure 1







Existing RCSD No. 1 STP and Adjacent Environment
Figure 10



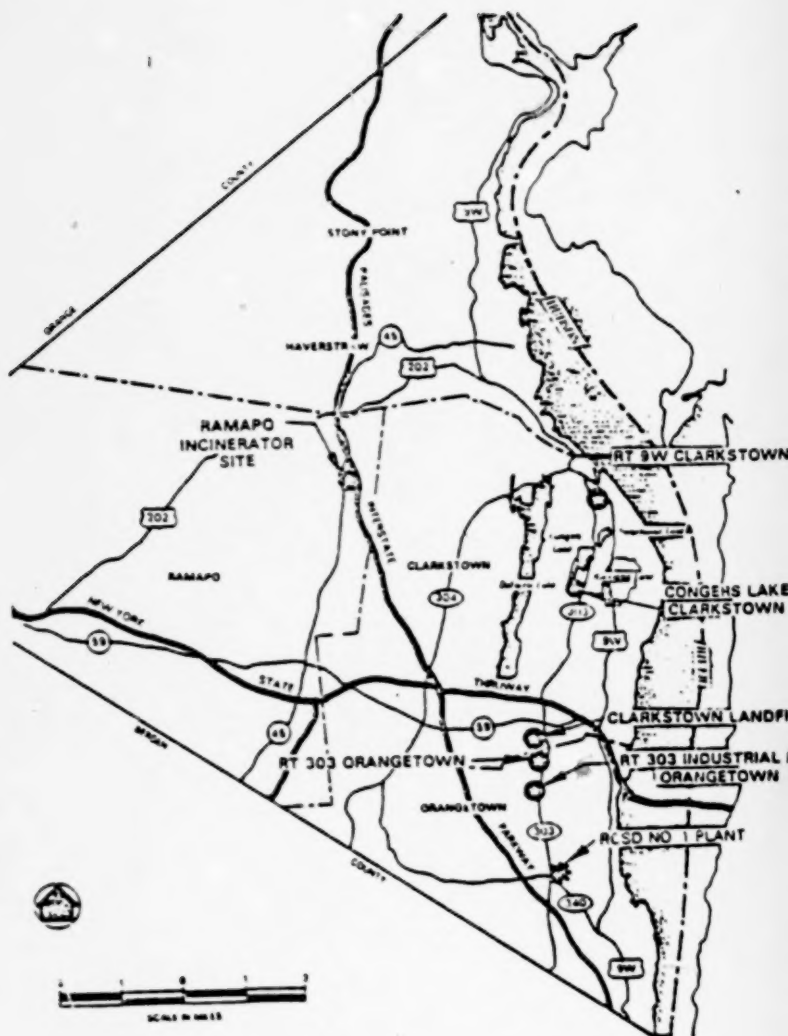
LEGEND

EXISTING STRUCTURES

PROPOSED ADDITIONS

RAILROAD

WASTEWATER TREATMENT PLANT NO. 1
PROPOSED EXPANSION
Figure 11



POTENTIAL COMPOSTING SITES

Figure 12